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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/224,980	01/04/99	WALDROP	A 2003-1

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IM22/0424

EXAMINER	
BEFUMO, J	
ART UNIT	PAPER NUMBER
1771	7

DATE MAILED: 04/24/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/224,980	WALDROP ET AL.	
	Examiner	Art Unit	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 February 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
18) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other: .

DETAILED ACTION

Continued Prosecution Application

1. The request filed on February 26, 2001, for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/224,980 is acceptable and a CPA has been established. An action on the CPA follows.

Response to Amendment

2. Amendment A, submitted as Paper No. 6 on February 26, 2001, has been entered. Claims 1 – 5 have been cancelled. Claims 6 – 14 have been added. Therefore, the pending claims are 6 – 14.

3. The rejections of claims 1 – 5, set forth in the previous Office Action are moot due to the cancellation of claim 1 – 5.

Specification

4. The disclosure is objected to because of the following informalities: Bicomponent is misspelled as biocomponent on page 4, line 6.

Appropriate correction is required.

Claim Objections

5. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. Claim 6 already claims that the warp yarn is UV stabilized.

6. Claims 11 – 14 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to

cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 11 refers to itself as the parent claim. And claims 12 – 14 refer to claim 11 which does not depend on a separate claim.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 7 and 8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 7 and 8 limit the UV stabilized monofilament yarn to the fill direction and the textured polyester yarn with an elastomeric base to the warp direction. However, the specification discloses that the UV stabilized sheath/core monofilament is woven in the warp direction and not the fill direction, while the textured polyester with said elastomeric base is woven in the fill direction and not the warp direction.

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 6 – 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. The phrase "polyester with an elastomeric base" in claim 6 is indefinite. Are the yarns made from individual fibers that are both polyester and elastic? Or are the fill yarns made from

twisted, blended, or conjugate fibers which comprise polyester fibers and elastomeric fibers? Claim 8 and 9 are similarly rejected. Claim 7 and 10 are rejected because of their dependency on Claim 6.

12. Claim 8 contains the trademark/trade name Taslan™. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a process of texturing filaments with an airjet and, accordingly, the identification/description is indefinite.

13. Claim 9 recites the limitation "said elastomeric base of said warp yarn" in lines 1 – 2. There is insufficient antecedent basis for this limitation in the claim.

Priority

14. Applicant is granted an effective filing date of January 6, 1998, since the Application is a Continuation of US 5,856,249. However, Applicant is not granted an earlier effective filing date related to US 5,807,794, US 5,632,526, or US 5,533,789 since US 5,586,249 is a continuation-in-part of US 5,807,794 which does not disclose a woven upholstery fabric with elastomeric, UV stabilized monofilaments in the warp direction and polyester fill yarns in the fill direction.

Claim Rejections - 35 USC § 102

15. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

16. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Gretzinger et al. (4,469,739).

Gretzinger et al. discloses a woven furniture support comprising an elastomeric monofilament in one direction and a yarn in the second direction (Abstract). Gretzinger et al. discloses that the monofilament can include UV stabilizing additives (column 8, lines 41 – 44). The yarn in the second direction is preferably polyester (column 9, lines 13 – 15). Additionally, Gretzinger et al. teaches that possible variations of the woven fabric include interspersing a minor amount of elastomeric filaments in the yarn (column 11, lines 1 – 5). Thus, claim 6 is anticipated by Gretzinger et al.

17. Claim 6 is rejected under 35 U.S.C. 102(e) as being anticipated by McLarty, III (5,855,991).

McLarty, III '991 discloses a woven fabric comprising elastomeric monofilaments in the warp direction and elastomeric monofilaments intermingled with textured polyester fibers in the

fill direction (column 3, lines 38 – 53). The elastomeric monofilaments in the warp direction are ELAS-TER™ monofilaments (column 3, lines 63 – 65), the same type of yarn used by the Applicant. Therefore, the monofilament would inherently be UV stabilized. Thus, claim 6 is anticipated by McLarty, III '991.

Claim Rejections - 35 USC § 103

18. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

19. Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLarty, III (5,533,789).

McLarty, III '789 discloses in Figures 6 and 7 a knitted fabric comprising a plurality of bicomponent sheath/core elastomeric monofilaments **30** knitted in the warp direction and weft inserted yarns **32** comprising elastomeric monofilaments **40** intermingled with aesthetically pleasing, textured polyester filaments **42** (column 3, lines 30 – 42). The elastomeric monofilaments in the warp direction are ELAS-TER™ monofilaments (column 3, lines 34 – 36), the same type of yarn used by the Applicant. Therefore, the monofilament would inherently be UV stabilized.

McLarty III '789 fails to teach weaving the ELAS-TER™ monofilaments with the polyester and elastomeric yarn in a barathea weave. It would have been obvious to one having ordinary skill in the art to weave the two components together to produce woven fabric. The woven fabric would inherently stretch less than a knit fabric of the same material due to the knit structure. Therefore, a woven fabric with the elastomeric monofilaments would not stretch as much providing more support. Also the making of a woven fabric would require less material

since the knit yarn which binds the two components together in Figures 6 and 7 would not be needed when the components were intertwoven.

Finally, since McLarty, III '789 discloses that the fabric, used for seat upholstery, is formed with an aesthetic side suitable for contacting the user of the seat, while also having good support (column 1, lines 46 – 54). Thus, it would have been obvious to one having ordinary skill in the art to use a barathea weave pattern which inherently places the fill yarns on the surface of the fabric. Therefore, the user would be more comfortable since they would come into contact with aesthetically pleasing yarns instead of the elastomeric monofilaments.

20. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gretzinger et al. (4,469,739) in view of McLarty, III (5,533,789).

21. Claim 10 rejected under 35 U.S.C. 103(a) as being unpatentable over McLarty, III '991 or Gretzinger et al. as applied to claim 6 above.

The features of Gretzinger et al., McLarty, III '789 and McLarty, III '991 have been set forth above. McLarty '991 and Gretzinger et al. fail to teach using a barathea weave as the weave structure of the fabric. It would have been obvious to one having ordinary skill in the art to use a barathea weave pattern which inherently places the fill yarns on the surface of the fabric. Therefore, the user would be more comfortable since they would come into contact with aesthetically pleasing yarns comprising polyester filaments and elastomeric filaments instead of the elastomeric monofilaments. The fabric would be more comfortable to the user since it would have a bulkier yarn on the surface that has a softer feel.

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Remarks:

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